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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the Norwegian Refugee Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

REPUBLIC OF CROATIA

Arbitrary deprivation of property and interference with home

As recently noted by the UN Committee on Economic, Social and Cultural Rights (hereinafter "ESCR Committee"), six years after the conclusion of the armed conflict "many displaced ethnic Serbs continue to face legal and administrative difficulties in attempting to repossess their former homes" in Croatia.1 The Croatian legal scheme2 continues to favor occupants allocated private property by the government (including persons who are neither internally displaced ("IDPs") nor refugees), allowing them to indefinitely defeat the owner's right to re-possess his/her property. Re-possession is conditioned upon government provision of alternative accommodation to the occupant.3 However, there is no time limit within which such accommodation must be provided. Further, Croatia's property repossession mechanism is limited to citizens; IDPs and refugees who have been unable to obtain Croatian citizenship are not permitted to use the repossession scheme. Croatia should adopt a re-possession scheme that upholds the right of ownership for all owners, including non-citizens.

Also as noted by the ESCR Committee,4 Croatia has not restituted occupancy rights that were eliminated by law and judicial decision during and following the armed conflict. Given Croatia's failure to address this deprivation, individuals whose rights were terminated through court action (estimated at approximately 20,000)5 have no recourse other than to seek review through the use of a narrow procedural remedy for concluded civil cases. This remedy is an inappropriate and inadequate means to address the systematic deprivation of rights.6 Those whose rights were terminated *ex lege* have no legal remedy to redress the deprivation. In Bosnia and Herzegovina and Kosovo, analogous deprivations have been remedied through post-conflict legislation restoring occupancy rights. Croatia should adopt legislation solving

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1 E/C.12/1/Add. 73, 30 November 2001, para. 10, Consideration of Reports Submitted by State Parties Under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights. Also see Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since 18 April 1996, 24 May 2001 (hereinafter "May 2001 OSCE Progress Report"), para. 18 ("Although legislation governing the discriminatory allocation of both private and socially-owned property has since been amended or revoked, the discriminatory effects of such legislation have continued. . . . Despite repeated advice by the Mission and the international community, no comprehensive legal framework dealing with property issues has been established.").

2 E.g., the Croatian Program for the Return and Accommodation of Displaced Persons, Refugees and Resettled Persons and the Amendments to the Law on Areas of Special State Concern.

3 See Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since March 2001, 13 November 2001 (hereinafter "November 2001 OSCE Progress Report"), para. 15 ("The Government continued to insist on the provision of alternative accommodation before repossession, a stand that negatively affects Serb owners. This self-imposed principle blocks property repossession and denies owners their inherent property rights."). In 1997, the Croatian Constitutional Court found a similar requirement contained in Article 11, para. 4 of the Law on Temporary Takeover contrary to the Constitution of the Republic of Croatia.

4 E/C.12/1/Add.73, paras. 10, 15; also see May 2001 OSCE Progress Report, para. 24 ("Those affected by the loss of their right to socially-owned apartments have not yet been offered effective recourse to reclaim the apartment they formerly occupied or to receive adequate compensation *in lieu* of restitution of these rights.")

5 See May 2001 OSCE Progress Report, para. 24.

6 The ESCR Committee noted the "obstacles faced by many ethnic Serbs with regard to occupancy rights and the difficulty they encounter when seeking redress through the courts" for unilaterally terminated occupancy rights. E/C.12/1/Add. 73, para. 15.

this long-standing problem which adversely affects minority return primarily to urban areas.

Lack of Access to Justice

Many refugees lack meaningful access to Croatia's private property repossession scheme since it is available essentially only to those residing in Croatia or able to travel there. Croatia should expand access for refugees so that they can apply for repossession *prior to* their return.

The private property repossession scheme eliminates the owner's right to judicial remedy otherwise available under domestic law, mandating an administrative procedure that has proven ineffective and inefficient. Croatia delegated the owner's access to court to a local administrative body, leaving the owner without a right to obtain judicial review.7 Croatia should re-instate uniform access for property owners to judicial remedies.

As noted by the ESCR Committee, Croatia's enormous backlog of court cases impedes access to justice.8 As in the example of occupancy rights, Croatia's failure to provide systematic relief for the deprivation of rights significantly contributes to this backlog. Indeed, the ESCR Committee expressed its view that "the burden on the court system could be significantly reduced by adopting non-discriminatory laws and by streamlining legal and administrative procedures."9

Denial of freedom of movement/choice of residence

The Croatian Ministry of the Interior routinely denies returning refugees who have been unable to obtain Croatian citizenship (and are thus seen as foreign citizens, primarily of Yugoslavia and Bosnia and Herzegovina) re-instatement of their permanent residence. The Ministry routinely denies re-instatement of permanent residence due to the applicants' failure to contemporaneously satisfy criteria applicable to foreigners for maintaining residence such as source of financial support, property, family attachments, etc. Such standards are not appropriate for returning refugees and ignore the returnee's prior long-term pre-conflict attachments to Croatia and the reality that attachments were disrupted by the conflict and years in asylum, including those attachments severed by state action, e.g., terminated occupancy rights that leaves refugees without access to property. Returned refugees should automatically be permitted to re-instate their permanent residence based on their pre-conflict attachments to Croatia.

Arbitrary Denial of Citizenship Acquisition

The ESCR Committee noted that "the granting of citizenship under the Law on Croatian Citizenship (1991) has not been governed by fair and objective non-discriminatory criteria based on pre-war residence and connections to Croatia.. . . the inability to prove habitual residence negatively affects the possibility of obtaining Croatian nationality for persons from certain minority groups who left during the war and wish to return to Croatia."10 Consistent

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7 Application of "double standards in the processing of property repossession claims continues. In general, Croat owners in the Danube Region have access to courts, allowing them to repossess their property quickly. In contrast, Serb owners are mostly denied such access in central and southern Croatia, while their properties cannot be repossessed until alternative accommodation is first provided to the temporary Croat users." November 2001 OSCE Progress report, para. 11.
8 E/C.12/1/Add. 73, para. 15. See also November 2001 OSCE Progress Report, para. 37 (noting official report of backlog of 1,340,000 court cases, an increase of 20% over past years.)
9 Id., at para. 28.
10 E/C.12/1/Add. 73, para. 11.

with the recommendations of the ESCR Committee as well as the obligations it undertook in 1997 when it signed on to the "Principles on Citizenship Legislation Concerning the Parties to the Peace Agreements on Bosnia and Herzegovina,"11 Croatia should "establish objective criteria for the granting of citizenship to those wishing to obtain citizenship, in particular to those who left during the war and wish to return to Croatia, irrespective of ethnic origin."12 As further recommended by the ESCR Committee, Croatia should ratify the UN Convention on the Reduction of Statelessness.

BOSNIA AND HERZEGOVINA

Arbitrary Denial of Citizenship Renunciation

Bosnia and Herzegovina ("BiH") continues to impose documentation requirements for renunciation of its citizenship that cannot be met by BiH citizens who are pre-conflict habitual residents in other independent states of the former Yugoslavia. Such requirements force individuals to maintain BiH citizenship although they lack links to BiH and hinder acquisition of citizenship in their state of residence. For example, the Croatian Ministry of the Interior continues to require formal renunciation of BIH citizenship as a condition of granting Croatian citizenship by naturalization to non-Croats who are long-term habitual residents of Croatia of Bosnian origin. Due to the negative interaction between BiH and Croatian citizenship regulations, these long-term Croatian residents remain without any legal status in Croatia, either residence or citizenship, 6 years after the Erdut Agreement and 4 years after the completion of the United Nations Administration in Eastern Slavonia. (UNTAES). Documentation requirements for renunciation of BiH citizenship should be adjusted to permit realistic access to this procedure for BiH citizens who pre-conflict habitual residents in other independent states of the former Yugoslavia.

Improper Requirements to Forfeit Refugee Status

Local administrative bodies frequently demand that refugees in the process of return forfeit their refugee status as a condition of receiving public benefits. This condition is often imposed even though the refugee is not yet able to return due to a continuing lack of access to property. For example, some pension funds require refugees who still are awaiting reconstruction to provide proof of forfeiting their refugee status in Yugoslavia prior to accepting applications for the re-instatement of pension. Social benefits in BiH should not be conditioned on forfeiture of refugee status in Yugoslavia.

FEDERAL REPUBLIC OF YUGOSLAVIA, INCLUDING KOSOVO

No Remedies Against UNMIK

IDPs like all residents of Kosovo lack any means of recourse for damages (e.g., use of property, personal injury) incurred by UNMIK. Through UNMIK Regulation 2000/47 providing immunity for KFOR and UNMIK, UNMIK obligated itself to establish a claims tribunal. In April 2001, the Ombudsperson, partially in response to a complaint by NRC, found the regulation in the absence of a claims tribunal contrary to international standards.13

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11 These principles were developed under the auspices of UNHCR and the Council of Europe.

12 E/C.12/1/Add. 73, para. 22.

13 See Special Report No. 1 on the Compatibility with Recognized International Standards of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo (18 August 2000) and on the Implementation of the Above Regulation.

Despite the Ombudsperson's report, UNMIK continues to lack any mechanism for resolving damage claims. UNMIK should establish the claims tribunal guaranteed by Regulation 2000/47.

Unlawful Restraint on Sale of Private Property

UNMIK Regulation 2001/17 provides that sales of private property can be denied in certain designated areas where the sale could result in a change in the ethnic balance of a community. In October 2001, the Ombudsperson, partially in response to a complaint submitted by NRC, issued a report finding that this regulation violates numerous international human rights standards, including Article 1, Protocol 1 of the European Convention on Human Rights guaranteeing the right to enjoy possessions as well as Article 2, paragraph 1, Protocol 4, ECHR guaranteeing freedom of movement within one's country.14 UNMIK should eliminate Regulation 2001/17's unlawful restraint on the sale of private property.

Denial of Freedom of Movement/Choice of Residence

"Exiled" officials of the Serbian Ministry of the Interior prevent IDPs who wish to change their permanent residence from Kosovo to Serbia proper from doing so. Such a refusal by local police violates the right of these IDPs to freely move within their own state and to choose their place of residence in violation of Article 12, paragraph 1, International Covenant on Civil and Political Rights as well as Principle 14, Guiding Principles on Internal Displacement (hereinafter "GPID"). Further, police refusal to issue new identity documents with permanent residence in Serbia proper disadvantages IDPs in the enjoyment and exercise of their legal rights, including employment and education, in violation of Principle 20, GPID. Serbian officials should permit IDPs from Kosovo to change their permanent residence upon request.

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14 See Special Report No. 5 on Certain Aspects of UNMIK Regulation No. 2001/17 on Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo (22 August 2001).